Westbank First Nation
Self-Government Agreement

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Westbank First Nation Self-Government Agreement

between

Westbank First Nation

and

Her Majesty the Queen in Right of Canada

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WESTBANK FIRST NATION
SELF-GOVERNMENT AGREEMENT

This Agreement is made the 3rd day of October, 2003,

BETWEEN:

WESTBANK FIRST NATION, as represented by the Chief and Council of Westbank First Nation, hereinafter referred to as "Westbank First Nation",

AND:

HER MAJESTY THE QUEEN in right of Canada, as represented by the Minister of Indian Affairs and Northern Development, hereinafter referred to as "Canada".

WHEREAS:

the Parties entered into an Agreement-in-Principle on July 13, 1998 which contemplated a Final Agreement to be concluded substantially in the form of the Agreement-in-Principle;

WHEREAS:

the Government of Canada recognizes that the inherent right of self-government is an existing aboriginal right within section 35 of the *Constitution Act, 1982*;

WHEREAS:

the Parties to this Agreement acknowledge that they may have different legal views as to the scope and content of an inherent right of self-government;

WHEREAS:

the Parties nevertheless intend by this Agreement to set out certain arrangements for a number of jurisdictions for implementation of the inherent right of self-government by Westbank First Nation on Westbank Lands without taking any definitive positions with respect to how an inherent right of self-government may ultimately be defined at law;

WHEREAS:

Westbank First Nation asserts that it has unextinguished aboriginal title, and jurisdictions based on aboriginal title and that its aboriginal title includes Westbank Lands;

WHEREAS:

Westbank First Nation states that it is part of the Okanagan Nation. This Agreement is without prejudice to other First Nations within the Okanagan Nation or to their systems or institutions of self-governance;

WHEREAS:

Westbank First Nation recognizes the need to provide good government for all persons residing on Westbank Lands;

WHEREAS:

Westbank First Nation will continue to consult and may enter into agreements with neighbouring local governments to maintain good relations and coordinate activities or in respect of other such matters as Westbank First Nation desires.

NOW THEREFORE THE PARTIES AGREE TO THE FOLLOWING AS THE AGREEMENT:

PART I

DEFINITIONS

In this Agreement:

"Agreement" means this Agreement between Westbank First Nation and Canada.

"Band" means the body of Indians declared to be a band for the purposes of the *Indian Act* by P.C. 1973-3571, referred to as "Westbank First Nation".

"Community Purpose" means a purpose which is intended to provide a facility, benefit or support for the Members or persons residing on Westbank Lands, and is limited to transportation and utility corridors and requirements related to transportation and utility corridors.

"conflict" means actual conflict in operation.

"Constitution" means the constitution of Westbank First Nation established and ratified in accordance with this Agreement.

"Council" means the governing council of Westbank First Nation.

"Effective Date" means the date the Legislation comes into force.

"expropriation" means a taking of an interest or all interests in Westbank Lands through a process established by sections 111 to 124 or by Westbank Law established in accordance with section 105.

"intellectual property" includes any intangible property right resulting from intellectual activity in the industrial, scientific, literary, or artistic fields, including, but not limited to, any right relating to patents, copyrights, trademarks, industrial designs, or plant breeders' rights.

"interest in Westbank Lands" means any estate, right or interest of any nature in Westbank Lands recognized by law, including for greater certainty any leasehold interest, but does not include title to Westbank Lands as referred to in section 87.

"jurisdiction" means law-making authority.

"Legislation" means an act of Parliament which confirms and implements and gives effect to this Agreement.

"Licence", in relation to Westbank Lands, means any right of use or occupation of the land other

than an interest in Westbank Lands.

"Member" means a member of Westbank First Nation as defined in the Constitution.

"Mentally Incompetent" means a person who pursuant to the laws of the Province, had been found to be mentally defective or incompetent for the purposes of any laws of the Province providing for the administration of estates of mentally defective or incompetent persons.

"Minerals" means and includes gold, silver and all naturally occurring useful minerals, but shall not include peat, coal, petroleum, natural gas, bitumen, oil shales, limestone, marble, clay, gypsum or any building stone when mined for building purposes, earth, ash, marl, gravel, sand or any element which forms part of the agricultural surface of the land.

"ordinarily resident" means the place where, in the settled routine of a person's life, that person regularly, normally or customarily lives.

"Parties" means Westbank First Nation and Canada.

"province" means the province of British Columbia.

"Westbank First Nation" means the body of people formerly known as the Band under the *Indian Act* and for whose use and benefit in common Westbank Lands have been set apart by Her Majesty the Queen.

"Westbank Lands" are:

a. the following existing Westbank Indian reserves:

   i) Mission Creek Indian Reserve Number 8 in the province;
   ii) Tsinstikeptum Indian Reserve Number 9 in the province;
   iii) Tsinstikeptum Indian Reserve Number 10 in the province;
   iv) Medicine Hill Indian Reserve Number 11 in the province;
   v) Medicine Creek Indian Reserve Number 12 in the province;

b. lands set apart by Canada in the future as lands reserved for Westbank First Nation within the meaning of subsection 91(24) of the *Constitution Act 1867*.

"Westbank Law" means laws of Westbank First Nation enacted in accordance with the jurisdictions described in this Agreement, and the Constitution.

PART II

FUNDAMENTAL PRINCIPLES

1. (a) The purpose of this Agreement is to implement aspects of the inherent right of self-government by Westbank First Nation on Westbank Lands based on the recognition that the inherent right of self-government is an existing aboriginal right within section 35 of the *Constitution Act, 1982*.

   (b) This Agreement is not intended to constitute an expression by the Parties of any definitive legal views with respect to how an inherent right of self-government may ultimately be defined at law.

2. (a) This Agreement is not intended to restrict the capacity of Westbank First Nation to participate in any other process that may be established to implement the inherent right of self-government by First Nations on a tribal, regional or national basis.

   (b) Canada retains the discretion to set its criteria for parties with whom it negotiates self-government arrangements.

3. The arrangements set out in this Agreement reflect a government-to-government relationship between the Parties, within the framework of the Constitution of Canada and with the recognition that the inherent right of self-government is an existing aboriginal right within section 35 of the *Constitution Act, 1982*.

4. (a) This Agreement shall not constitute a treaty. This Agreement is without prejudice to treaty-making in British Columbia.

   (b) On the effective date of a treaty involving Westbank First Nation, Canada and the province, where that treaty includes governance provisions, this Agreement and any implementing legislation shall be superseded by that treaty.

5. Westbank Lands are "lands reserved for the Indians" under subsection 91(24) of the *Constitution Act, 1867*, and are reserves set apart by Her Majesty the Queen in right of Canada for the use and benefit of Westbank First Nation.

6. Nothing in this Agreement or the Legislation shall be construed as limiting or restricting either Party's position with respect to aboriginal rights, title, jurisdictions or interests.

7. Nothing in this Agreement or the Legislation shall be construed to abrogate or derogate from aboriginal rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

8. For greater certainty, nothing in this Agreement shall be construed as recognising or denying any aboriginal rights recognised and affirmed by section 35 of the *Constitution Act, 1982*.

9. Members who are Canadian citizens or permanent residents of Canada shall continue to be entitled to all of the rights and benefits of all other Canadian citizens or permanent residents of Canada applicable to them from time to time.

10. Westbank First Nation, or its Members, or both, shall be eligible to participate in and benefit from federal programs for aboriginal people in accordance with general criteria established from time to time, to the extent that Westbank First Nation has not assumed responsibility for provision of such benefits or programs.

11. Westbank First Nation, or its Members, or both, shall be entitled to rights under applicable federal legislation for Indians, Bands or aboriginal people in accordance with general criteria established under the legislation from time to time.

12. The implementation of this Agreement shall not affect the Okanagan Nation or other First Nations within the Okanagan Nation in their assertion of an inherent right of self-government.

13. The Parties agree that:

    (a) notwithstanding this Agreement, the overall fiduciary relationship between the Parties shall continue; and

    (b) as Westbank First Nation exercises jurisdiction and authority pursuant to this Agreement, fiduciary obligations owed by Canada to Westbank First Nation shall be as determined by the law respecting fiduciary relationships.

14. The implementation of this Agreement shall be conducted in good faith.

15. Following the Effective Date, and subject to this Agreement, the implementation plan and the financial transfer agreement, Council will determine when it will exercise any remaining jurisdictions set out in this Agreement.

16. To support the implementation of this Agreement, the Parties shall negotiate a financial transfer agreement and an implementation plan in accordance with the provisions of Parts XXV and XXVI.

17. Responsibility for the delivery of federal programs and services to Westbank First Nation and its Members shall remain with Canada until such time as Westbank First Nation

assumes responsibility for the delivery of programs and services in accordance with, and subject to, this Agreement, the financial transfer agreement, the implementation plan or other agreements entered into between Westbank First Nation and Canada.

18. Westbank First Nation and Canada may enter into agreements from time to time with respect to specific matters contained in this Agreement.

PART III

LEGAL STATUS AND CAPACITY

19. In addition to Westbank First Nation's capacity to pass and enforce Westbank Law pursuant to this Agreement, Westbank First Nation is a legal entity with the rights, powers and privileges of a natural person, which includes the capacity to:

(a) enter into agreements and contracts with any person, government or organization;

(b) acquire, hold or dispose of property and any interests therein;

(c) acquire, hold or dispose of bequests and gifts;

(d) sue or be sued and to act on its behalf in legal proceedings;

(e) hold, spend, invest or borrow money, and secure or guarantee the repayment of money borrowed;

(f) create, operate, contribute to, act as trustee or otherwise deal with trusts;

(g) be appointed and to act as an executor, administrator or trustee of an estate; and

(h) do other things ancillary to the exercise of its rights, powers and privileges, but does not include the capacity to be appointed and to act as a guardian.

PART IV

POWERS OF GOVERNMENT

20. Westbank First Nation has legal capacity to govern itself in accordance with this Agreement.

21. Westbank First Nation shall act through the Council in exercising its powers and carrying out its duties and functions.

22. (a) Westbank First Nation may make laws or do such other things as may be necessarily incidental to the jurisdictions set out in this Agreement or to enable Westbank First Nation to exercise its rights or to carry out its responsibilities pursuant to this Agreement.

(b) Westbank Law may provide for the issuance of licences and permits for a fee in relation to any matter which is the subject of Westbank Law.

23. For greater certainty, the Parties recognize that the jurisdictions set out in this Agreement are not intended to be definitive of the inherent right that may be implemented through negotiations between Westbank First Nation and Canada or definitive of how the inherent right of self-government may ultimately be defined at law.

24. For greater certainty, the government of Westbank First Nation and its institutions shall be considered public bodies for the purpose of tort claims against the government of Westbank First Nation and its institutions.

25. Westbank First Nation may enter into agreements with Canada or other governments in Canada concerning land, waters, resources, both renewable and non-renewable, or air adjacent to Westbank Lands or where an interest of Westbank First Nation is or may be affected.

26. Westbank First Nation may, in the exercise of the jurisdictions set out in this Agreement, make laws concerning the personal immunity from civil liability of employees, officers or elected officials of the government of Westbank First Nation and its institutions, subject to such provisions also providing that the government of Westbank First Nation, as employer, retains vicarious liability for the acts or omissions of employees, officers or elected officials of the government of the Westbank First Nation covered by the immunity.

27. Westbank First Nation may enter into agreements with any level of government in Canada, including any government agency or entity or any other national, regional or

local entity, group or organization, concerning delivery of programs and services on Westbank Lands.

28. Westbank First Nation may enter into agreements to receive powers, including legislative powers, by delegation.

PART V

APPLICATION OF LAW

29. Federal law shall continue to apply to Westbank First Nation, Council, Westbank Lands and Members. In the event of a conflict between a Westbank Law and a federal law, priority shall be determined in accordance with this Agreement.

30. A federal law shall prevail in the event of a conflict between a federal law and a Westbank Law, to the extent of the conflict, where the subject matter of the federal law is a subject matter in relation to which Westbank First Nation has no jurisdiction set out in this Agreement.

31. In the event of a conflict between a Westbank Law and a federal law that relates to the peace, order and good government of Canada, the federal law shall prevail to the extent of the conflict.

32. The government of Westbank First Nation and Council in respect of all matters under its authority are bound by the provisions of the *Canadian Charter of Rights and Freedoms* with due regard for section 25 of the *Charter* which provides that the guarantee in the *Charter* of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada, and the rights and freedoms guaranteed by the *Charter* are enforceable in respect of the government of Westbank First Nation and the Council.

33. In the event of a conflict between either this Agreement or the Legislation, or both, and other federal law, this Agreement or the Legislation, or both, shall prevail to the extent of the conflict.

34. (a) Subject to any other act of Parliament, all provincial laws of general application from time to time in force in British Columbia are applicable to and in respect of Members, except to the extent that those laws are in conflict with this Agreement, the Legislation or any Westbank Law, and except to the extent that those laws make provision for any matter for which provision is made by or under this Agreement or the Legislation or Westbank Law.

(b) For greater certainty, subsection 34(a) is intended to have the same effect on provincial laws of general application as section 88 of the *Indian Act* has on provincial laws of general application.

35. The operation of this Agreement shall not limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence, security and public

safety.

36. (a) As a general principle, Westbank First Nation shall take all necessary measures to ensure compliance of its laws and actions with Canada's international legal obligations.

(b) Notwithstanding subsection 36(a), Westbank First Nation shall remedy any Westbank Law or action found to be inconsistent with Canada's international legal obligations by an international treaty body or other competent tribunal.

37. Federal legislation relating to endangered species and fish and fish habitat shall prevail in the event of a conflict with Westbank Law to the extent of the conflict.

38. Federal legislation setting out obligations with respect to the collection of statistics and reporting on natural resources in Canada shall prevail in the event of a conflict with Westbank Law to the extent of the conflict.

39. For greater certainty, the jurisdictions to be exercised by Council set out in this Agreement do not extend to matters not specifically addressed in this Agreement including:

(a) criminal law, including the procedure in criminal matters;

(b) protection of the health and safety of all Canadians;

(c) intellectual property, in respect of all matters within federal jurisdiction; and

(d) broadcasting and telecommunications.

40. Nothing in this Agreement shall affect the applications of Crown prerogatives and Crown immunities.

41. In the event of a conflict between a provision of this Part and any other provision in the Agreement, the provision of this Part shall prevail to the extent of the conflict.

PART VI

STRUCTURES AND PROCEDURES OF GOVERNMENT

42. There shall be a Constitution. The Constitution shall be consistent with this Agreement.

43. The Constitution shall provide for the following matters:

(a) that the Council shall act on behalf of Westbank First Nation in exercising jurisdiction in accordance with this Agreement;

(b) for democratic elections of Council by Members, rules for composition of Council, tenure of Council members and provision for the removal of Council members;

(c) internal financial management and accountability to Members in accordance with Part IX;

(d) conflict of interest rules;

(e) procedures for the passage and amendment of laws for Westbank First Nation;

(f) appeal mechanisms;

(g) an amending procedure for the Constitution;

(h) provisions for public notification of Westbank Law;

(i) rules governing membership in the Westbank First Nation in accordance with Part VII;

(j) land rules in accordance with Part X;

(k) referendum procedures; and

(l) provisions in relation to other matters over which Westbank First Nation has jurisdiction as set out in this Agreement which are determined by Westbank First Nation to be of sufficient importance to be included in the Constitution.

44. (a) The provisions of the Constitution referred to in section 43 shall be ratified by Westbank First Nation at the same time and in the same manner as ratification of this Agreement.

(b) The Constitution ratified in accordance with Part XXXII shall come into force on the Effective Date.

45 (a) Except as otherwise provided in this agreement, in the event of a conflict between a provision of the Constitution in relation to a matter set out in subsection 43(a) to (k) and federal law, the Constitution prevails to the extent of the conflict.

(b) In the event of a conflict between a provision of the Constitution provided for in accordance with subsection 43(l) and federal law, the conflict of laws provision in the Agreement in relation to that subject matter of the conflicting provision of the Constitution shall apply.

46. The Chief and Councillors of Westbank First Nation holding office at the time this Agreement comes into effect shall form the Council until such time as elections are held pursuant to the Constitution.

47. Westbank Law may establish administrative boards, tribunals, commissions or other administrative bodies for carrying out functions under Westbank Law including the determination of matters or rights under Westbank Law except with respect to matters or rights the Constitution requires determined in a specific manner.

Judicial Review

48. (a) The *Judicial Review Procedure Act* of British Columbia shall apply to the Westbank First Nation.

(b) For the purpose of applying the *Judicial Review Procedure Act* of British Columbia, an "enactment" shall mean Westbank Law.

(c) Applications for judicial review shall be brought before the Supreme Court of British Columbia in accordance with the *Judicial Review Procedure Act* of British Columbia.

Delegation

49. Any jurisdiction of Westbank First Nation may be delegated, consistent with the Constitution and Agreement, in whole or in part to a tribal, regional or national body established by First Nations subject to:

(a) the delegatee body acting under an implemented self-government agreement with Canada that provides for the exercise of such jurisdiction; or

(b) a court recognizing the right of that delegatee body to exercise such jurisdiction.

50. In the exercise of jurisdiction set out in this Agreement, Westbank First Nation may delegate authority, other than law-making authority, to any tribal council, regional body or national body established by First Nations or to any other legal entity in Canada.

51. Any delegation made by Westbank First Nation pursuant to sections 49 or 50 is not valid except by written agreement with the delegatee.

52. Westbank First Nation may delegate any of its authority, other than law-making authority or authority in relation to matters the Constitution requires determined in a specific manner, to a department, institution, agency or official of Westbank First Nation government.

Governance

53. Should Westbank First Nation enter into governance arrangements with other First Nations that would establish another level of First Nation government, Canada, Westbank First Nation and the other level of government shall address which functions of the government of Westbank First Nation should remain at the individual First Nation's level, which functions should be transferred to the other level of government and what changes may be required to the existing Agreement, financial transfer agreement and implementation plan in order to ensure the stable and efficient operation of both levels of government.

Non-Member Representation

54. (a) Non-Members living on Westbank Lands or having an interest in Westbank Lands shall be provided in Westbank Law with mechanisms through which they may have input into proposed Westbank Law and proposed amendments to Westbank Law that directly and significantly affect such non-Members.

(b) Westbank Law providing the mechanisms required under subsection 54(a) shall be enacted prior to any new Westbank Law being enacted by Council after the Effective Date, or within 30 days of the Effective Date, whichever is sooner.

(c) Westbank Law enacted to meet the obligation referred to in subsection 54(a) shall only be amended or replaced with the consent of the non-Members living on Westbank Lands or having an interest in Westbank Lands.

(d) Westbank Law enacted to meet the obligations under subsection 54(a) shall provide for the process by which the consent of the non-Members shall be obtained for the purposes in subsection 54(c).

Accountability

55. Financial accountability standards of Westbank First Nation shall be at least comparable to those of other public governments providing similar public services.

Indian Act, Indian Oil and Gas Act, First Nations Land Management Act

56. Except as provided for in this Agreement, the *Indian Act* shall no longer apply to Westbank First Nation, Council, Members and Westbank Lands.

57. The *Indian Oil and Gas Act* and regulations thereunder shall no longer apply to Westbank First Nation, Council, Members and Westbank Lands.

58. (a) Upon the Effective Date, the Framework Agreement on First Nation Land Management, the *First Nations Land Management Act*, shall no longer apply to Westbank First Nation, Council, Members and Westbank Lands.

(b) Any interest in Westbank Lands approved, created, granted or any action undertaken in accordance with the *First Nations Land Management Act* and existing as of the Effective Date shall continue to have effect in accordance with its terms and conditions.

(c) Any law enacted by Westbank First Nation in accordance with the *First Nations Land Management Act* shall be deemed to be in force as a Westbank Law.

(d) If the *First Nations Governance Act* (Bill C- 7) receives Royal Assent, upon the Effective Date the *First Nations Governance Act* shall no longer apply to Westbank First Nation, Council, Members and Westbank Lands.

59. Westbank First Nation bylaws enacted pursuant to the *Indian Act* shall be deemed to be in force as a Westbank Law where the subject matter of such bylaws is a subject matter in relation to which Westbank First Nation has jurisdiction pursuant to this Agreement.

60. For greater certainty, with respect to bylaws enacted by Westbank First Nation pursuant to those provisions of the *Indian Act* that continue to apply, such bylaws shall remain in force as amended from time to time.

Notification to Canada of Westbank Law

61. Following the enactment of the first Westbank Law pursuant to Parts VII to XXIII, Westbank First Nation shall notify Canada at least 60 days prior to the first Westbank Law coming into force for each of Parts VII to XXIII.

62. Westbank First Nation shall provide Canada with copies of Westbank Law for Canada's internal information purposes.

63. No Westbank Law shall be considered void, invalid or unenforceable, nor shall any person's liability under Westbank Law be affected by reason only of a defect in the form or a failure to comply with sections 61 and 62.

Westbank Public Register

64. Westbank Law must be in writing and available to the public.

65. Westbank First Nation shall maintain a Westbank First Nation public register of all Westbank Law.

66. On the enactment of a Westbank Law, the original thereof shall be deposited in the Westbank First Nation's public register of Westbank Law.

Validity of Westbank Law

67. The *Statutory Instruments Act* shall not apply to Westbank Law.

68. A Westbank Law enacted after the Effective Date shall come into force at the beginning of the day following its enactment or such later time as is specified therein.

69. In any proceedings, a copy of a Westbank Law appearing to be certified as a true copy by an officer of the government of Westbank First Nation is, without proof of that officer's signature or official character, evidence of its enactment on the date specified in the Westbank Law.

PART VII

WESTBANK FIRST NATION MEMBERSHIP

70. Westbank First Nation has jurisdiction in relation to membership of Westbank First Nation.

71. Membership in Westbank First Nation does not purport to confer or deny rights of entry into Canada or to grant Canadian citizenship.

72. The membership rules in the Constitution and Westbank Laws in relation to membership shall not deprive any person who had the right to have his or her name entered in the Band List, as defined in the *Indian Act*, for Westbank First Nation, immediately prior to the Effective Date, of the right to be a Member by reason only of a situation that existed or an action that was taken before the Effective Date.

73. All Members entitled to be registered as Indians under the *Indian Act* shall continue to be entitled to be registered as Indians under the *Indian Act*.

74. This Agreement shall not preclude Westbank First Nation from using its best efforts to establish a process whereby all Members who are not registered as Indians shall be entitled to be registered as Indians under the *Indian Act*.

75. No member of another band or First Nation in Canada may, at the same time, be a Member.

76. The Constitution shall include a procedure for reviewing decisions made pursuant to the Constitution.

77. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to Membership and federal law, Westbank Law shall prevail to the extent of the conflict.

PART VIII

WILLS AND ESTATES

78. (a) Westbank First Nation has jurisdiction in relation to the wills and estates of Members ordinarily resident on Westbank Lands who are Indians as defined under the *Indian Act*.

(b) For greater certainty, the reference to "estates" in this Part means the property of deceased persons, Mentally Incompetent persons and infants.

79. (a) Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, the definitions of "child", "estate", and "mentally incompetent Indian" referred to in section 2 of the *Indian Act* and sections 43 to 48, subsections 50(1) to 50(3) and sections 51 to 52.5 of the *Indian Act* continue to apply.

(b) Until such time as the coming into force of any Westbank Law enacted pursuant to the jurisdiction described in this Part, section 42 of the *Indian Act* and regulations thereunder shall continue to apply to the extent of any conflict with Westbank Law passed under other jurisdictions set out in this Agreement.

(c) Notwithstanding section 78 and subsection 79(a), wills and estates under administration prior to the exercise of jurisdiction by Westbank First Nation under this Part shall continue to be administered under the provisions of the *Indian Act*.

(d) For greater certainty, wills and estates of individuals who die after the enactment of Westbank Law pursuant to subsection 78(a) shall be administered in accordance with Westbank Law.

80. The jurisdiction referred to in subsection 78(a) shall not extend to immoveable property off Westbank Lands.

81. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to wills and estates and federal law, Westbank Law shall prevail to the extent of the conflict.

PART IX

FINANCIAL MANAGEMENT

82. Westbank First Nation has jurisdiction in relation to internal financial management of Westbank First Nation.

83. Moneys raised by taxation, fees, permits or other means by Westbank First Nation shall be administered in accordance with the Constitution and Westbank Laws in relation to internal financial management and, for financial transfer agreement funds, shall be administered in accordance with the provisions of the financial transfer agreement.

84. Without limiting the generality of the foregoing, Westbank First Nation may:

(a) receive moneys from the federal or provincial governments and from other entities;

(b) expend, invest, assign or commit moneys received;

(c) borrow moneys, including issuing treasury bills, temporary debentures, promissory notes or similar forms of obligations; and

(d) perform such other functions regarding financial management and administration as may be required from time to time.

85. For greater certainty, financial obligations assumed by Westbank First Nation pursuant to this Part shall not imply or impose any liability on Canada.

86. Except as provided in this Agreement, in the event of a conflict between Westbank Law in relation to internal financial management procedures of Westbank First Nation and federal law, Westbank Law shall prevail to the extent of the conflict.

PART X

WESTBANK LANDS AND LAND MANAGEMENT

Title and Interests in Westbank Lands

87. Title to all Westbank Lands shall continue to be held in the name of Her Majesty the Queen in Right of Canada for the use and benefit of Westbank First Nation.

88. Subject to sections 90 and 91, Licences and interests in Westbank Lands approved, created, granted or issued pursuant to the *Indian Act* and existing as of the Effective Date shall continue to have effect in accordance with their terms and conditions.

89. Subject to this Agreement, Westbank First Nation shall have the rights, powers, responsibilities and privileges of an owner in relation to Westbank Lands and may grant Licences and interests in Westbank Lands.

90. As of the Effective Date, the rights and obligations of Canada as grantor in respect of Licences and interests in Westbank Lands are transferred to Westbank First Nation.

91. Interests in Westbank Lands held on the Effective Date by Members pursuant to allotments under subsection 20(1) of the *Indian Act* are subject to the provisions of Westbank Law governing interests in Westbank Lands and sharing in natural resource revenues.

Exchange of Lands

92. Subject to sections 111 to 131, Westbank Lands shall not be alienated except for exchange of land in circumstances where:

(a) Westbank First Nation shall receive lands of greater or equivalent size or value in consideration for the exchange taking into account all of its interests involved;

(b) Canada is willing to set apart the lands received in exchange as a reserve defined under the *Indian Act* and as subsection 91(24) lands as set out in the *Constitution Act, 1867*;

(c) Council has made full disclosure to its Members of all the circumstances surrounding the exchange. At least three community meetings shall be held where the proposed transactions are disclosed; and

(d) the Members have approved the exchange in accordance with an approval process

to be established in the Constitution for this purpose.

93. (a) Where the criteria in section 92 have been satisfied, Westbank First Nation can execute an authorization and direction to Canada to exchange title to the land.

(b) Upon Canada receiving authorization and direction to exchange Westbank Land, Canada shall take the necessary steps to transfer and acquire the relevant titles to the lands in accordance with:

(i) the authorization;

(ii) the terms and conditions of the exchange; and

(iii) procedural requirements applicable to acquisitions and dispositions of federal Crown lands.

94. Westbank First Nation shall be responsible for determining whether the criteria referred to in section 92 have been fulfilled. Westbank First Nation's determination shall be definitive and can be relied upon as such by Canada.

95. For greater certainty, the land alienated in accordance with sections 92 and 93 shall no longer be "Lands reserved for the Indians" under subsection 91(24) of the *Constitution Act, 1867*.

Register

96. (a) Westbank First Nation has jurisdiction to establish a lands register for Westbank Lands. Any register for Westbank Lands established by Westbank First Nation shall be at least equivalent to the register referred to in subsubsection 96(b)(i) existing prior to the exercise of this jurisdiction.

(b) Until such time as Westbank First Nation exercises its jurisdiction to establish a lands register, interests in Westbank Lands are to be registered in:

(i) a register to be known as the Westbank Lands Register established by Canada for the registration of interests in Westbank Lands, to be administered, subject to subsubsection 96(b)(ii), in the same manner as the Reserve Land Register established under the *Indian Act*; or

(ii) in an alternative register system established for the registration of interests in Westbank Lands pursuant to an agreement between Westbank First Nation and Canada.

(c) In the event that an alternative register system has been established pursuant to subsubsection 96(b)(ii), the Westbank Lands Register referred to in subsubsection 96(b)(i) shall no longer register interests in Westbank Lands.

97. Either Westbank Lands register referred to in subsection 96(b) shall accommodate the registration of interests not accommodated specifically in the *Indian Act*, in accordance with criteria or procedures to be agreed upon by Canada and Westbank First Nation.

98. Document processing shall take place at a Westbank First Nation land registry office. Original documents concerning transactions affecting interests in Westbank Lands, once processed, shall be forwarded to the Westbank Lands Register or its successor referred to in subsubsection 96(b)(ii) for registration until Westbank First Nation exercises jurisdiction under subsection 96(a) to establish a lands register.

99. Interests in Westbank Lands existing as of the Effective Date shall be recognized and recorded in the Westbank Lands Register or its successor referred to in subsubsection 96(b)(ii).

100. Until such time as the coming into force of the Westbank Law enacted pursuant to jurisdiction described in subsection 96(a), section 21 of the *Indian Act* continues to apply.

101. Until the coming into force of the first Westbank Law enacted pursuant to subsection 96(a), any improvements to the Reserve Land Register administered under the *Indian Act* shall be applied to the Westbank Lands Register.

Additional Reserve Lands

102. Subject to Canada's policy for additions to reserve, as amended from time to time, lands acquired by Westbank First Nation may be transferred to Canada for the purpose of being set apart as lands reserved for Indians under subsection 91(24) of the *Constitution Act, 1867* and as reserves for the use and benefit of Westbank First Nation within the meaning of that term under the *Indian Act*.

Governance of Westbank Lands

103. Westbank First Nation has jurisdiction in relation to the management, administration, government, control, regulation, use and protection of Westbank Lands. This jurisdiction includes jurisdiction over foreshore and waterbeds where these areas form part of Westbank Lands, but does not include Minerals which are addressed in Part XII.

This jurisdiction includes:

(a) the creation of interests in Westbank Lands;

(b) procedures for the transfer or disposition of interests in Westbank Lands;

(c) procedures in accordance with the Constitution for encumbering interests in Westbank Lands, including rules affecting the exemption referred to in section 89 of the *Indian Act;*

(d) expropriation of interests in Westbank Lands for community purposes in accordance with section 105;

(e) treatment of interests in Westbank Lands on marriage breakdown in accordance with section 108;

(f) zoning and land use planning;

(g) use, construction, maintenance, repair and demolition of buildings and other structures;

(h) access to Westbank Lands subject to sections 106 and 107;

(i) trespass on Westbank Lands; and

(j) residency on Westbank Lands.

104. Westbank First Nation may cause surveys to be made of Westbank Lands in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.

Expropriation for Community Purposes

105. Westbank First Nation has jurisdiction in relation to expropriation of interests in Westbank Lands for a Community Purpose subject to the following principles:

(a) Westbank First Nation shall provide fair compensation to the interest holder and a mechanism to resolve disputes in relation to compensation it pays; and

(b) the following interests in Westbank Lands are not subject to Westbank expropriations:

(i) interests obtained pursuant to section 35 of the *Indian Act*; and

(ii) interests in Westbank Lands held by Canada.

Access

106. The exercise of jurisdiction by Westbank First Nation in relation to access to Westbank Lands shall not prevent those persons with rights or interests in Westbank Lands from being able to access those lands associated with those rights or interests.

107. (a) Persons acting in an official capacity pursuant to lawful authority shall have access to Westbank Lands. Such access shall be without charge except as provided for under the lawful authority for access. Such persons shall comply with Westbank Law enacted pursuant to subsection 103(h) where such compliance does not unduly interfere with the carrying out of their duties. Subject to subsection107(b), Canada shall give prior notice of the exercise of such access to Council when it is reasonable to do so.

(b) Peace officers, federal investigators and law enforcement officers carrying out duties under the law of Canada are not required to provide notice as referred to in subsection 107(a).

Treatment of Interests in Westbank Lands on Marriage Breakdown

108. (a) Westbank First Nation has jurisdiction in relation to treatment of interests in Westbank Lands on marriage breakdown involving at least one Member and shall enact a law within twelve months of the Effective Date setting out rules and procedures applicable on the breakdown of a marriage to use, occupancy and possession of Westbank Lands and the division of interests in these lands.

(b) For greater certainty, the laws referred to in subsection 108(a) shall not discriminate on the basis of sex but may distinguish as between Members and non-Members for the purpose of determining what type of interest in Westbank Lands may be held by an individual.

(c) Any dispute between Canada and Westbank First Nation in respect of this section shall be subject to arbitration following the rules provided in section 271.

Procedures to Transfer by Testamentary Disposition or Succession

109. (a) The Constitution shall include procedures that apply to the transfer, by testamentary disposition or succession, of any interest in Westbank Lands.

(b) For greater certainty, the procedures in the Constitution referred to in subsection 109(a) shall not be considered an exercise of jurisdiction under Part VIII.

Priority of Land and Land Management Law

110. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to Westbank Lands and land management and federal law, Westbank Law shall prevail to the extent of the conflict.

Federal Expropriation

111. The Parties declare that it is of fundamental importance to maintain the amount and integrity of Westbank Lands, and they therefore agree, as a general principle, that Westbank Lands will not be expropriated.

112. Notwithstanding the general principle against expropriation, interests in Westbank Lands may be expropriated in accordance with federal legislation:

(a) only with the consent of the Governor-in-Council; and

(b) only for the use of a federal department, agency or other entity as described in the legislation.

113. The Governor-in-Council shall only consent to an expropriation of interests in Westbank Lands if the expropriation is justifiable in accordance with section 114 and necessary for a federal public purpose that serves the national interest.

114. The Governor in Council shall not consent to an expropriation unless satisfied that:

(a) alternatives to expropriation have been considered and such alternatives are not reasonably feasible;

(b) there are no non-Westbank Lands reasonably available;

(c) reasonable efforts have been made to acquire the interest in land through agreement with Westbank First Nation;

(d) the interest being taken is the smallest reasonably necessary and the term for which it is taken is the shortest reasonably required; and

(e) Westbank First Nation has been provided with information relevant to the expropriation.

115. Prior to the Governor-in-Council issuing an order consenting to the expropriation of Westbank Lands, Canada shall make public a report on the reasons justifying the expropriation and the steps taken in satisfaction of this expropriation procedure and shall

provide a copy of the report to Westbank First Nation.

116. Where Westbank First Nation objects to a proposed expropriation, it may refer the issue to a mediator under Part XXX within 60 days of receiving a copy of the report referred to in section 115.

117. An order of the Governor-in-Council consenting to the expropriation shall not be issued earlier than:

(a) the end of the 60 day period referred to in section 116; and

(b) the day the opinion or recommendation of the mediator is released, where Westbank First Nation referred the proposed expropriation to a mediator under section 116.

Compensation by Canada

118. Where an interest in Westbank Lands is expropriated under sections 111 to 117, compensation shall be provided to Westbank First Nation consisting of:

(a) land; and

(b) any additional compensation required to achieve the total compensation determined under section 120.

119. Land provided to Westbank First Nation as compensation may be of an area that is less than the area of the land in which an interest has been expropriated only if the total area of the land comprised in Westbank Lands is not less following the expropriation than at the Effective Date.

120. The total compensation shall be determined taking into account the following factors:

(a) the market value of the expropriated interest or of the land in which an interest has been expropriated;

(b) the replacement value of any improvement to the land;

(c) any expenses or losses resulting from a disturbance attributable to the expropriation;

(d) any reduction in the value of any interest in Westbank Lands that is not expropriated;

(e) any adverse effect on any cultural or other special value of the land to the Westbank First Nation; and

(f) the value of any special economic advantage arising out of or incidental to the occupation or use of the land to the extent that value is not otherwise compensated.

121. If the value and nature of the compensation cannot be agreed upon by Canada or the entity described in subsection 112(b) and Westbank First Nation, either party may refer a dispute on compensation to binding arbitration under Part XXX, other than for expropriation under the *National Energy Board Act*.

122. For expropriation under the *National Energy Board Act*:

(a) disputes over compensation shall be referred to a board, committee, panel or other body authorized by the *National Energy Board Act* to settle disputes in respect of expropriation;

(b) the board, committee, panel or other body referred to under subsection 122(a) shall include at least one nominee of Westbank First Nation; and

(c) the board, committee, panel or other body referred to under subsection 122(a) shall be comprised of persons who have knowledge of, and experience related to the criteria set out in section 120.

123. Any claim or encumbrance in respect of the interest expropriated may only be claimed against the amount of compensation that is otherwise payable to the person or entity whose interest is being expropriated.

124. Interest on the compensation is payable from the date the expropriation takes effect, at the same rate as for prejudgment interest in the Supreme Court of British Columbia.

Status of Westbank Lands

125. Where less than the full interest of the Westbank First Nation in Westbank Lands is expropriated:

(a) the land retains its status as Westbank Lands;

(b) the land remains subject to Westbank Law that is otherwise applicable, except to the extent that such Westbank Law is inconsistent with the expropriation; and,

(c) Westbank First Nation may continue to use and occupy the land, except to

the extent the use or occupation is inconsistent with the expropriation.

126. Alternate lands accepted by Westbank First Nation from Canada as part of the compensation shall become Westbank Lands and shall be set apart by Canada as a reserve within the meaning of that term defined in the *Indian Act*, and as subsection 91(24) lands as set out in the *Constitution Act, 1867*.

Reversion of Interest in Westbank Lands

127. Where an expropriated interest in Westbank Lands, which is less than the full interest of Westbank First Nation in Westbank Lands, is no longer required by Canada or the entity described in section 112(b) for the purpose for which it was expropriated, the interest in land shall revert to Westbank First Nation.

128. The Minister responsible for the expropriating department or agency may, without the consent of the Governor-in-Council, decide that the land is no longer required and determine the disposition of any improvements.

Return of Full Interest in Westbank Lands

129. Where an interest in Westbank Lands was expropriated but is no longer required by Canada or the entity described in the legislation for the purpose for which it was expropriated, the land shall be returned to Westbank First Nation on terms negotiated by Westbank First Nation and Canada, and where appropriate, the entity described in the legislation.

130. Where the terms and conditions of the return cannot be agreed upon by Westbank First Nation and Canada and, where appropriate, the entity described in the legislation, either party may refer the dispute to arbitration under Part XXX.

131. The Minister responsible for the expropriating department or agency may, without the consent of the Governor-in-Council, decide that the land is no longer required and determine the disposition of any improvements.

Application of *Expropriation Act*

132. Any provisions of the *Expropriation Act* that are applicable to an expropriation of Westbank Lands by Canada continue to apply unless inconsistent with this Agreement.

PART XI

LANDLORD AND TENANT

133. Westbank First Nation has jurisdiction in relation to landlord and tenant matters with respect to Westbank Lands and premises on Westbank Lands. This shall include jurisdiction in relation to residential premises, commercial premises, manufactured home parks and agricultural land for matters including:

(a) remedies for breach of agreements;

(b) procedures for rent increases;

(c) notice provisions;

(d) termination and regaining of possession;

(e) procedures for manufactured home installation;

(f) compliance with health and safety codes;

(g) dispute resolution and appeal mechanisms;

(h) procedures for amendment of agreements; and

(i) requirements for creation of agreements.

134. Subject to the provisions of this Agreement, in the event of a conflict between Westbank Law in relation to landlord and tenant matters and federal law, Westbank Law shall prevail to the extent of the conflict.

PART XII

RESOURCE MANAGEMENT

Renewable Resources

135. Westbank First Nation has jurisdiction in relation to renewable resources situated on, under or above Westbank Lands including protection, conservation, management, development and disposition of renewable resources, except water which is addressed in section 136; this jurisdiction includes:

(a) preservation and management of wildlife, including game, birds, fur bearing animals, and their natural habitat;

(b) hunting and trapping of wildlife; and

(c) preservation and management of the forest resource, including forest enhancement and pest control;

but does not include fish and fish habitat.

136. To the extent that Westbank First Nation has rights over water as recognized by federal or provincial legislation or by operation of law, Council has jurisdiction to manage and regulate water use.

137. Where there are conservation concerns of either Party relating to migratory birds, Westbank First Nation and Canada shall cooperate to establish appropriate co-management arrangements where necessary to address conservation concerns.

Non-Renewable Resources

138. Westbank First Nation has jurisdiction on Westbank Lands in relation to non-renewable resources, including but not limited to:

(a) oil, oil shales and gas; and

(b) gravel, clay, sand, soil, stone, peat, coal, bitumen, limestone, marble, gypsum, ash, marl, any building stones mined for building purposes or any other element forming part of the agricultural surface of Westbank Lands;

but not including Minerals and uranium mining, refining and handling.

139. Without limiting the generality of section 138, the jurisdiction referred to in section 138 includes the authority to make laws in relation to the non-renewable resources listed therein respecting:

(a) management, exploration, exploitation, development and disposition of those resources;

(b) issuance of permits and leases for development and disposition of those resources and regulation of conditions, including suspension and revocation of those permits or leases; and

(c) control of administrative functions including revenue collection in relation to permits or leases for exploration, development and disposition of resources.

Priority of Law in Relation to Resource Management

140. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to resource management and federal law, Westbank Law shall prevail to the extent of the conflict.

PART XIII

AGRICULTURE

141. Westbank First Nation has jurisdiction in relation to agriculture on Westbank Lands.

142. (a) In the event of a conflict between either provincial laws of general application in relation to agriculture or federal laws in relation to agriculture and Westbank Law enacted in accordance with any of the provisions of this Agreement, the provincial law of general application and the federal law shall prevail to the extent of the conflict.

(b) For greater certainty, subsection 142(a) is not intended to expand or increase the application of provincial laws on or to Westbank Lands, or to impose provincial processes, structures or standards on Westbank Lands where they would not otherwise be applicable.

143. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, paragraph 73(1)(b) and any regulation made thereunder, and subsections 58(1) and (2) of the *Indian Act* shall continue to apply.

144. For greater certainty, the jurisdiction referred to in section 141 does not include jurisdiction in relation to interprovincial and international trade and commerce in agricultural goods.

PART XIV

ENVIRONMENT

145. For environmental protection and conservation provisions of this Agreement, the definitions of "analyst", "environment" and "inspector" shall be as set out in the *Canadian Environmental Protection Act*.

146. "Environmental Emergency" means an uncontrolled, unplanned or accidental release, or a release in contravention of laws or regulations, of a substance into the environment, or the reasonable likelihood of such a release into the environment, that:

(a) has or may have an immediate or long-term harmful effect on the environment;

(b) constitutes, or may constitute, a danger to the environment on which humans depend; or

(c) constitutes, or may constitute, a danger in Canada to human life or health.

147. "Pollution prevention" means the use of processes, practices, materials, products or energy that avoid or minimize the creation of pollutants and wastes and reduce the overall risk to the environment or human health.

Environmental Protection

148. Westbank First Nation has jurisdiction in relation to the protection and conservation of the environment on Westbank Lands.

149. (a) The laws and regulations created pursuant to section 148 shall be designed to be at least equivalent in standard to those set out under federal law and provincial laws of general application, including provisions for emergency measures, which could be enforced on Westbank Lands.

(b) For greater certainty, subsection 149(a) is not intended to expand or increase the application of provincial laws on Westbank Lands or to impose provincial processes, structures or standards on Westbank Lands, where they would not be otherwise applicable.

150. In the event of a conflict between federal law in relation to the protection and conservation of the environment and Westbank Law enacted in accordance with any provisions of this Agreement, the federal law shall prevail to the extent of the conflict.

151. The Parties to this Agreement recognize that Canada and Westbank First Nation retain their respective authority and discretion to prosecute violations and otherwise enforce their respective environmental laws on Westbank Lands.

152. Until such time as the coming into force of any Westbank Law enacted pursuant to the jurisdiction referred to in section 148, paragraph 73(1)(k) of the *Indian Act* and any regulations made thereunder continue to apply.

153. Westbank First Nation may enter into agreements with Canada or other governments to enhance cooperation and coordination in the development and implementation of their respective environment functions on Westbank Lands.

154. (a) If the Party who has primary responsibility to respond to an Environmental Emergency does not respond or is unable to respond to an Environmental Emergency in a timely manner, the other Party may respond to the Environmental Emergency.

(b) The responding Party will notify the Party with primary responsibility as soon as practicable of the Environmental Emergency, and of the measures taken by the responding Party to prevent, correct or respond to the Environmental Emergency.

Enforcement of Westbank Environment Laws

155. Westbank First Nation has jurisdiction to enforce Westbank Law enacted under this Part on Westbank Lands and the jurisdiction to create laws with powers and mechanisms comparable to but not greater than those available under federal environmental legislation. Government of Westbank First Nation enforcement officers shall have powers and authority at least comparable to but not greater than similar officers under federal environmental legislation.

156. Westbank First Nation environmental legislation and regulations may provide for enforcement measures and capacities including:

(a) appointment of inspectors or other enforcement officers;

(b) assignment of powers to inspectors including the following:

(i) require that information be provided to them;

(ii) copy information and recover information electronically stored on computer systems or otherwise; and

(iii) such other powers as necessary to effectively enforce Westbank Law;

(c) appointment of analysts;

(d) assignment of powers to analysts when they are accompanied by an inspector including:

(i) enter a place;

(ii) open receptacles and containers;

(iii) take samples and measurements; and

(iv) conduct tests;

(e) for the purpose of inspection, the obligation of those who are subject to Westbank First Nation environmental laws to provide all reasonable assistance to enforcement officers and analysts who may accompany them;

(f) subject to subsection 197(b), the setting of penalties and orders which a court of competent jurisdiction can impose for violations of Westbank First Nation environmental laws and regulations including:

(i) monetary fines;

(ii) imprisonment;

(iii) payments to funds created to restore damaged environment or take other corrective measures, including clean-up or disposal of toxic or other substances;

(iv) orders to publish the facts of a violation or to notify, at the offender's cost, any person, company or government adversely affected by a violation of Westbank Law;

(v) orders directing:

(A) correction of the environmental damage;

(B) community service;

(C) payment of a performance bond;

(D) prohibition of any activity that may result in continuation or repetition of the violation;

(E) suspension of work on the project;

(vi) orders imposing negotiated settlements and other appropriate orders in situations of violation;

(g) the establishment of capacities for the effective enforcement of such laws and regulations enacted under any of the authorities related to environmental protection and environmental assessment identified in this Agreement.

157. Westbank First Nation may set up mechanisms for it to apply to a court of competent jurisdiction for injunction orders consistent with those under federal legislation in relation to environment.

Environmental Assessment

158. For the environmental assessment provisions of this Agreement, the definitions of :

(a) "environment", "environmental effect", "mediation" and "proponent" shall be as set out in the *Canadian Environmental Assessment Act*;

(b) the definition of "project" shall be:

(i) as set out in part (a) of the definition of "project" as set out in *Canadian Environmental Assessment Act*; or

(ii) any proposed physical activity not relating to a physical work that is prescribed or is within a class of physical activities that is prescribed pursuant to Westbank Law; and

(c) "review panel" means a body established to hold public hearings in a manner that offers the public an opportunity to participate in the environmental assessment of the project.

159. Westbank First Nation has jurisdiction in relation to environmental assessment for projects on Westbank Lands.

160. Westbank Law in relation to environmental assessment shall provide for a determination of projects on Westbank Lands that are subject to an environmental assessment.

161. The Westbank First Nation environmental assessment process shall provide that projects subject to an environmental assessment, as determined under the laws and regulations created pursuant to section 159, cannot be authorized until such an environmental

assessment has been conducted and the proper authorization has been obtained by the proponent.

162. Any laws and regulations created pursuant to section 159 establishing an environmental assessment process shall maintain or exceed the requirements of the *Canadian Environmental Assessment Act*.

163. For greater certainty, where the following requirements are contained in the *Canadian Environmental Assessment Act*, the Westbank First Nation environmental assessment process established pursuant to section 159 shall provide:

(a) that the following factors are taken into consideration in the environmental assessment process:

(i) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;

(ii) the significance of the environmental effects;

(iii) comments from the public received in accordance with Westbank First Nation environmental assessment laws;

(iv) measures that are technically and economically feasible and would mitigate any significant adverse environmental effects of the project; and

(v) where projects are likely to have significant adverse environmental effects, provide for the consideration of the following additional factors:

(A) the purpose of the project;

(B) alternative means of carrying out the project that are technically feasible and the environmental effects of any such alternative means;

(C) the need for, and the requirements of, any follow-up program in respect of the project; and

(D) the capacity of renewable resources that are likely to be significantly affected by the project to meet the needs of the present and those of the future;

(b) where appropriate, for public participation and public access to the environmental assessment information in the assessment of the project;

(c) the opportunity for mediation or establishment of a review panel where a project is likely to have significant adverse environmental effects;

(d) for a requirement that decision makers take the environmental assessment report, and, where applicable, the implementation of the mitigation measures into consideration prior to taking any action or making any decision that would enable the project to be carried out in whole or in part;

(e) for any decision-making authority in relation to the project to ensure that the mitigation measures are implemented; and

(f) for any other activities or principles that facilitate an effective and efficient assessment.

164. The Westbank First Nation environmental assessment process shall be structured to promote the implementation of the "proponent pays principle" which establishes that proponents are responsible for costs associated with the environmental assessment process including the preparation of the environmental assessment report, mitigation measures, follow-up programs and public consultation.

165. For greater certainty, any laws created under section 159 shall not diminish the federal government's ability to set and implement national standards, voluntary and regulatory, for environmental assessments.

166. In the event of a conflict between federal law in relation to environmental assessment and Westbank Law enacted in accordance with any provisions of this Agreement, the federal law shall prevail to the extent of the conflict.

167. Any person, body, commission or entity established by and accountable to Council to carry out the environmental assessment process may delegate any responsibility or authority, other than decision-making authority that would determine whether a project would be carried out or referred to a review panel, to another person, body, commission or entity.

168. Where there is an environmental assessment subject to a review panel pursuant to Westbank First Nation environmental assessment law, the review panel shall:

(a) have the power to summon witnesses and compel them to give evidence and produce documents the review panel considers necessary for conducting its

assessment of the project;

(b) have the same power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and other things as is vested in a court of record;

(c) hold the review in public in whole, or to the extent necessary to protect the witness, in part, where a review panel is satisfied after representations made by a witness that specific, direct and substantial harm would be caused to the witness by the disclosure of the evidence, documents or other things that the witness is ordered to give or produce;

(d) have any summons issued by the review panel pursuant to the power set out in subsection 168(a), for the purpose of enforcement, be made a summons of a court of competent jurisdiction by following the usual practice and procedure of that court;

(e) not be subject to any legal action or other proceeding against it or a person on it for or in respect of anything done or omitted to be done, during the course of, and for the purposes of, the assessment by the review panel; and

(f) have other powers and authority comparable to but not greater than similar bodies or panels under federal environmental assessment legislation.

169. Where a project is subject to the Westbank First Nation environmental assessment process, Council may, by order, prohibit the proponent from undertaking any work in advance of the completion of the environmental assessment pursuant to Westbank Law.

170. Canada and Westbank First Nation agree to negotiate and attempt to reach agreement on harmonizing their respective environmental assessment regimes and processes, with the involvement of the province where the province agrees to participate, to promote effective and consistent environmental assessment regimes and processes and to avoid uncertainty and duplication.

171. Where a project is subject to the Westbank First Nation environmental assessment process and that of the *Canadian Environmental Assessment Act*, Canada and Westbank First Nation shall, where possible, pursuant to any harmonization agreement resulting from section 170, implement the principle that the Westbank First Nation environmental assessment procedures and time periods relating to environmental assessment shall be used.

172. (a) Where Canada undertakes a public review pursuant to the *Canadian Environmental Assessment Act* for a project which is likely to have significant

adverse environmental effects on Westbank Lands, Westbank First Nation shall be entitled to nominate a person to the panel.

(b) Where a project is subject to the *Canadian Environmental Assessment Act* and is likely to have significant adverse environmental effects on Westbank Lands, Canada shall ensure that Westbank First Nation:

(i) receives timely notice of, and relevant information in Canada's possession on, the project and the potential environmental effects, subject to relevant privacy legislation; and

(ii) is consulted and provided with an opportunity to participate in the environmental assessment applicable to the project.

(c) Where Westbank First Nation undertakes a public review pursuant to its environmental assessment process for a project that is likely to have significant adverse environmental effects on other federal Crown land, Canada shall be entitled to nominate a person to the panel.

(d) Where a project subject to the Westbank First Nation environmental assessment process is likely to have significant adverse environmental effects on other federal Crown lands, Westbank First Nation shall ensure that Canada:

(i) receives timely notice of, and relevant information in Westbank First Nation's possession on, the project and the potential environmental effects, subject to relevant privacy legislation; and

(ii) is consulted and provided with an opportunity to participate in the environmental assessment applicable to the project.

173. In addition to section 170, for legislative bodies other than Canada and the province that have environmental assessment processes, Westbank First Nation shall consider harmonization of environmental assessment processes with the other legislative bodies.

174. Westbank First Nation shall enact laws establishing a Westbank First Nation environmental assessment process in accordance with this Part. These laws shall come into force within 12 months of the Effective Date.

PART XV

CULTURE AND LANGUAGE

175. Westbank First Nation has jurisdiction in relation to preservation, promotion and development of Okanagan culture and language on Westbank Lands including:

(a) the management, preservation and protection of archaeological sites on Westbank Lands including the issuance of permits and licences for excavation of archaeological sites;

(b) the management, disposal and development of, and access to burial sites and heritage sites which are located on Westbank Lands and which are of spiritual or religious significance to Members;

(c) the conservation, management and disposal of objects on Westbank Lands which are of religious or cultural significance to Members;

(d) use, preservation and promotion of Okanagan language; and

(e) authorization or accreditation for the use, reproduction and representation of Okanagan cultural symbols and practices and the teaching of Okanagan language on Westbank Lands.

176. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to Okanagan language and culture on Westbank Lands and federal law, Westbank Law shall prevail to the extent of the conflict.

177. Canada and Westbank First Nation recognize the integral role of Okanagan artifacts in the continuation of Okanagan culture, values and spiritual practices for Westbank First Nation.

178. Canada and Westbank First Nation recognize Westbank First Nation's traditional and sacred connection with Okanagan artifacts regardless of whether such artifacts are held by Westbank First Nation or the Canadian Museum of Civilization.

179. (a) Canada has no human remains as documented as having come from Westbank Lands. In the event that human remains having come from Westbank Lands are discovered in Canada's possession, Canada shall treat those remains in accordance with existing federal legislation, policies and procedures.

(b) Canada and Westbank First Nation shall negotiate and attempt to reach agreement

regarding the possible return of Okanagan artifacts reasonably attributable to Westbank First Nation held by the Canadian Museum of Civilization to Westbank First Nation.

(c) The Canadian Museum of Civilization and Westbank First Nation shall negotiate and attempt to reach agreements to establish the custodial arrangements in respect of Okanagan artifacts reasonably attributable to Westbank First Nation still remaining with the Canadian Museum of Civilization.

(d) The agreements negotiated pursuant to subsection 179(c) shall respect the special relationship of the Westbank First Nation and the Okanagan cultural material reasonably attributable to Westbank First Nation and shall comply with federal law and the statutory mandate of the Canadian Museum of Civilization, and may include:

(i) identification of the Okanagan artifacts reasonably attributable to Westbank First Nation to be in the possession of Westbank First Nation or the Canadian Museum of Civilization at the commencement of any particular agreement;

(ii) conditions of maintenance, storage and handling of the Okanagan artifacts reasonably attributable to Westbank First Nation;

(iii) conditions of access to and use, including study, display and reproduction, of the Okanagan artifacts reasonably attributable to Westbank First Nation and associated records by the public, researchers and scholars;

(iv) provision for incorporating new information into catalogue records and displays of the Okanagan artifacts reasonably attributable to Westbank First Nation; and

(v) provision for enhancing public knowledge of the Westbank First Nation through the participation of the Westbank First Nation in public programs and activities at the Canadian Museum of Civilization.

180. Canada shall use reasonable efforts to facilitate Westbank First Nation's access to Okanagan artifacts held in other public and private collections.

181. Westbank First Nation shall be treated as a public authority designated pursuant to subsection 32(2) of the *Cultural Property Export and Import Act* subject to:

(a) availability of a Westbank First Nation facility which meets accepted Canadian museological standards for long term storage and display of donated cultural

artifacts; or

(b) availability, through long term agreement between Westbank First Nation and an institution or public authority designated pursuant to subsection 32(2) of the *Cultural Property Export and Import Act*, of facilities for long term storage and display of donated cultural artifacts.

182. The official language of Westbank First Nation is Okanagan. Westbank Law and other business of Westbank First Nation government shall be written and conducted, as the case may be, in the English language. At the discretion of Westbank First Nation, the Constitution may also be written in the Okanagan language.

183. Services provided by a federal institution, as defined in the *Official Languages Act*, shall be provided in accordance with that Act and that Act shall prevail over Westbank Law to the extent of any conflict.

184. For greater certainty, a federal institution, as defined by the *Official Languages Act*, does not include Westbank First Nation, Council or other body established to perform a governmental function in relation to Westbank First Nation.

185. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, section 91 of the *Indian Act* shall continue to apply.

PART XVI

EDUCATION

186. (a) Westbank First Nation has jurisdiction in relation to kindergarten, elementary and secondary education on Westbank Lands for Members.

(b) The Westbank First Nation education systems shall be designed to permit transfers between education systems without academic penalty to the same extent as transfers are effected between other education jurisdictions in Canada.

187. Without limiting the generality of section 186, Westbank First Nation has the authority to:

(a) enter into tuition, post-secondary support, capital, curricular, recreational, special needs and other arrangements;

(b) create administrative bodies to administer any education program;

(c) enter into agreements regarding children of Members who attend school off Westbank Lands;

(d) enter into agreements with the province concerning the delivery of provincial services or the application of provincial standards including:

(i) curriculum development;

(ii) education level equivalencies;

(iii) teaching methodologies;

(iv) programs and standards;

(v) teacher certification;

(vi) teacher training and development; and

(vii) evaluation of the education systems;

(e) administer post-secondary student support funding for Members living on or off Westbank Lands.

188. Westbank First Nation's exercise of jurisdiction in education shall recognize the importance of compatibility with other education authorities while maintaining Westbank First Nation's right to protect its culture, identity, language and traditions.

189. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, sections 114 to 122 of the *Indian Act* shall continue to apply.

190. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to education and federal law, Westbank Law shall prevail to the extent of the conflict.

PART XVII

HEALTH SERVICES

191. Westbank First Nation has jurisdiction in relation to:

(a) the regulation of the practice of traditional Okanagan medicine on Westbank Lands; and

(b) the regulation of practitioners of traditional Okanagan medicine on Westbank Lands.

192. For greater certainty, the jurisdiction referred to in section 191 shall not:

(a) include jurisdiction to regulate products or substances that are regulated under provincial laws of general application or federal law; or

(b) affect the regulation of medical or health practitioners that require licensing or certification under provincial laws of general application.

193. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law made pursuant to the jurisdiction referred to in section 191 and federal law, Westbank Law shall prevail to the extent of the conflict.

194. Westbank First Nation may enter into agreements with any level of government, including any government agency or entity or any other national, regional or local entity, group or organization, concerning delivery of health services or the application of provincial or other health standards.

PART XVIII

ENFORCEMENT OF WESTBANK LAW

Enforcement Officials

195. Westbank First Nation has jurisdiction to:

(a) appoint and assign duties to Westbank First Nation government officials for the enforcement of Westbank Law on Westbank Lands; and

(b) appoint officials as Commissioners for taking of oaths in relation to matters under the jurisdiction, as referred to in this Agreement, of Westbank First Nation.

196. (a) Subject to any assignment of duties by Westbank First Nation pursuant to subsection 195(a):

(i) the Royal Canadian Mounted Police shall render such services as are necessary for enforcement of offences established by Westbank Law when such services are appropriate to the effective and efficient delivery of policing services in the province; and

(ii) such services shall be rendered in accordance with either:

(A) the Memorandum of Agreement dated April 1, 1992 between the government of Canada and the government of British Columbia (Provincial Policing Services Agreement) or its successors; or

(B) the Memorandum of Agreement Providing a Framework for Community Tripartite Agreements for the Royal Canadian Mounted Police - First Nations Community Police Service dated April 1, 1993 or its successors;

whichever is applicable.

(b) Nothing in this Agreement alters the arrangement for the enforcement of federal or provincial law on Westbank Lands by duly empowered federal or provincial officers as set out in the applicable Memorandum referred to in subsubsection 196(a)(ii).

Offences

197. (a) Subject to subsection 197(b), Council may make laws to provide for the imposition of penalties on persons convicted of violations of Westbank Law, including laws to provide for the imposition of a term of imprisonment or a fine, or both.

(b) Terms of imprisonment or fines for a violation of Westbank Law may be no greater than those that may be imposed under section 787(1) of the *Criminal Code of Canada*, except that:

(i) a Westbank Law may provide for a fine of up to $10,000.00 or the amount applicable to summary conviction offences under section 787(1) of the *Criminal Code of Canada*, whichever is greater; and

(ii) a Westbank Law in relation to environmental protection may provide for a fine that is no greater than the fine that may be imposed for offences punishable upon summary conviction under federal environmental legislation.

(c) Where there is a conviction for violation of Westbank Law, in addition to any other remedy or penalty, the Provincial Court of British Columbia in which the conviction is entered or the superior court of criminal jurisdiction having jurisdiction in any appeal, may make an order:

(i) prohibiting the continuation or repetition of the offence by the convicted person;

(ii) revoking or suspending any permit or other document issued under Westbank Law in respect of which the contravention was committed;

(iii) requiring the demolition of any structure erected in contravention of Westbank Law;

(iv) requiring the quarantine or destruction of any animal in respect of which the contravention was committed;

(v) for the forfeiture of and/or disposition of goods or chattels by means of which or in relation to which the offence was committed.

Enforcement Procedures for Westbank Law

198. (a) Westbank First Nation has jurisdiction to establish under Westbank Law

comprehensive enforcement procedures comparable to, but not greater than, those set out in similar federal or provincial legislation on similar subject matters, including inspections, searches, seizures and compulsory sample testing and production of information.

(b) Council may, by law, adopt the laws of the Province relating to proceedings in respect of offences that are created by a law of the Province, with such modifications as may be required.

199. (a) Westbank First Nation has jurisdiction to designate Westbank Law in respect of which enforcement officials have powers to issue a notice of violation as set out in subsection 199(b), and to fix the amount of fines with respect to that Westbank Law.

(b) An enforcement official appointed by Westbank First Nation who believes on reasonable grounds that an offence has been committed under a Westbank Law designated under subsection 199(a), may issue to the accused a notice of violation requiring that he or she pay at the offices of Westbank First Nation an amount set out in the notice of violation.

(c) A notice of violation issued under subsection 199(b) shall include:

(i) the charge against the accused;

(ii) the period within which and the manner in which payment may be made;

(iii) the address of the offices of Westbank First Nation to which payment may be made; and

(iv) an explanation of the consequences of payment and of not making payment, including the issuance of a summons or other process.

(d) On payment of a fine within the period and in the manner set out in the notice of violation, no further action may be taken against the accused in respect of the offence.

Prosecutions

200. For the purpose of prosecuting offences, Westbank First Nation shall follow one or more of these options:

(a) retain its own prosecutor;

(b) enter into an agreement with Canada to arrange for a federal agent to prosecute these offences; and

(c) enter into an agreement with Canada and the province to arrange for a provincial prosecutor.

201. (a) Prosecutions involving Westbank Law shall be heard before the Provincial Court of British Columbia.

(b) The summary conviction procedures of Part XXVII of the *Criminal Code* shall apply to prosecution of offences of Westbank Law.

202. Subject to any agreement with the province or a competent authority of the province containing provisions to the contrary, every fine, penalty or forfeiture imposed as a result of contravention of Westbank Law belongs to Westbank First Nation.

203. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to the jurisdictions referred to in this Part and federal law, Westbank Law shall prevail to the extent of the conflict.

PART XIX

LICENSING, REGULATION AND OPERATION OF BUSINESSES

204. Subject to section 205, Westbank First Nation has jurisdiction in relation to:

(a) licensing of businesses;

(b) regulation of the operation of businesses; and

(c) prohibition of the operation of businesses

on Westbank Lands.

205. For greater certainty:

(a) the jurisdiction referred to in section 204 does not include jurisdiction in relation to banking, bankruptcy and insolvency, interprovincial and international trade and incorporation; and

(b) the jurisdiction referred to in section 204 includes the raising of revenues by non-tax means.

206. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, paragraph 73(1)(e), and any regulations made thereunder, of the *Indian Act* shall continue to apply.

207. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to the jurisdiction referred to in section 204 and federal law, Westbank Law shall prevail to the extent of the conflict.

PART XX

TRAFFIC AND TRANSPORTATION

208. (a) Westbank First Nation has jurisdiction in relation to the regulation and control of ground traffic and transportation, and the design, construction, management and maintenance of the ground transportation infrastructure on Westbank Lands.

(b) For greater certainty, the exercise of the jurisdiction referred to in subsection 208(a) shall be designed to be at least equivalent in effect to federal and provincial regulations, safety standards and technical codes for the same subject matter.

209. For greater certainty, the jurisdiction referred to in section 208 does not include jurisdiction in relation to navigation and shipping.

210. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, paragraph 73(1)(c), and any regulations made thereunder, of the *Indian Act* shall continue to apply.

211. In the event of a conflict between federal law in relation to traffic and transportation and Westbank Law enacted in accordance with any of the provisions of this Agreement, the federal law shall prevail to the extent of the conflict.

PART XXI

PUBLIC WORKS, COMMUNITY INFRASTRUCTURE AND LOCAL SERVICES

212. Westbank First Nation has jurisdiction in relation to Westbank public works, community infrastructure and local services on Westbank Lands including works and services in relation to:

(a) the collection, conveyance and treatment and disposal of sewage;

(b) the supply, treatment, conveyance, storage and distribution of water;

(c) the collection, removal and disposal of waste and noxious, offensive or unwholesome substances;

(d) the regulation, storage and management of solid waste and recyclable material, including the regulation of facilities and commercial vehicles used in relation to these matters;

(e) community parks and buildings;

(f) services for pleasure, recreation and other community use, including art galleries, museums, historic sites, arenas, theatres, sports complexes and other public buildings or facilities for exhibition;

(g) fire prevention and suppression and the provision of assistance in response to other classes of circumstances specified by Westbank Law that may cause harm to persons or property;

(h) street lighting systems;

(i) transit, including transit for persons with special needs;

(j) the inspection, for health and safety purposes, of private residences and any other buildings or structures on Westbank Lands;

(k) animal control;

(l) control of pollution, nuisances, pests, noxious weeds, noise and unsightly premises;

(m) regulation of fire alarm systems and other security alarm systems; and

(n) programs in preparation for emergencies.

213. For greater certainty, the jurisdiction referred to in section 212 does not include jurisdiction in relation to postal services and aeronautics.

214. Westbank First Nation has jurisdiction in relation to the levying and collection of development cost charges, user fees and development permit fees to provide for public works, community infrastructure and local services on Westbank Lands.

215. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, paragraphs 73(1)(i) and (l), and any regulations made thereunder, of the *Indian Act* shall continue to apply.

216. Except as otherwise provided in this Agreement, Westbank Law with respect to public works, community infrastructure and local services shall prevail over federal law to the extent of any conflict, so long as Westbank First Nation health and safety standards and technical codes regarding public works, community infrastructure and local services are at least equivalent to federal health and safety standards and technical codes.

PART XXII

PUBLIC ORDER, PEACE AND SAFETY

217. (a) Westbank First Nation has jurisdiction in relation to public order, peace, safety, or a danger to public health on Westbank Lands.

(b) In the event of a conflict between a federal law or provincial laws of general application in relation to public order, peace, safety or a danger to public health, and a Westbank Law enacted in accordance with any of the provisions of this Agreement, the federal law or the provincial laws of general application shall prevail to the extent of the conflict.

(c) Notwithstanding subsection 217(b), in the event of a conflict between provincial laws of general application in relation to public order, peace, safety or a danger to public health and a Westbank Law enacted pursuant to Part XXIII, the Westbank Law shall prevail to the extent of the conflict.

218. Current procedures and responsibilities in relation to emergency preparedness and emergency response shall continue to apply until a subsequent agreement is completed with Westbank First Nation, Canada and the province.

219. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, paragraphs 73(1)(d) and (j), and any regulations made thereunder, of the *Indian Act* shall continue to apply.

PART XXIII

PROHIBITION OF INTOXICANTS

220. (a) Westbank First Nation has jurisdiction to prohibit the:

(i) sale;

(ii) barter;

(iii) supply;

(iv) manufacture; or

(v) possession

of intoxicants on Westbank Lands.

(b) Westbank First Nation has jurisdiction for exemptions in relation to possession of intoxicants on Westbank Lands.

221. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to prohibition of intoxicants and federal law, the Westbank Law shall prevail to the extent of the conflict.

PART XXIV

FUTURE NEGOTIATIONS

222. It is the intention of Westbank First Nation to seek further negotiations with the province and Canada to set out jurisdictional arrangements with respect to the following subject areas:

(a) health, in addition to what is provided for with respect to traditional aboriginal medicine in this Agreement;

(b) regulation of intoxicants in addition to what is provided for in this Agreement;

(c) labour relations on Westbank Lands;

(d) social services, family and child welfare law as it relates to Members;

(e) education of Members off Westbank Lands;

(f) gaming;

(g) minerals;

(h) water in addition to what is provided for in this Agreement; and

(i) the establishment of a Westbank First Nation court.

PART XXV

FINANCIAL ARRANGEMENTS

Principles of Financing

223. The fiscal relationship between Canada and Westbank First Nation shall be based on a government-to-government fiscal transfer.

224. The Parties are committed to the principle that the financing of self-government under this Agreement is a shared responsibility of Westbank First Nation and Canada.

225. (a) The Parties shall, prior to the ratification of this Agreement, and thereafter at five year intervals, or at such other intervals as the Parties may agree, negotiate a financial transfer agreement by which funding shall be provided to Westbank First Nation in order to enable the provision of agreed-upon public services.

(b) Financial transfer agreements shall reflect the principle of reasonably comparable levels of public services to Westbank First Nation in comparison to other communities in southern British Columbia taking into account Westbank First Nation own source revenue capacity.

226. Westbank First Nation's delivery of public services to levels comparable to those provided to other communities in southern British Columbia, where program delivery efficiencies related to size, capacity and economies of scale are evident, may require Westbank First Nation to enter into cooperative jurisdictional or program delivery arrangements with other First Nation governments or other governments. For greater certainty, nothing in this section prevents Westbank First Nation from enhancing the delivery of public services to its Members using its own source revenues.

227. The level of funding provided by Canada and required to fulfill commitments set out in section 225 is set out in the financial transfer agreement.

228. During the term of a financial transfer agreement, Westbank First Nation and Canada agree to examine jointly the need to amend the financial transfer agreement in light of decisions of courts or administrative tribunals which significantly impact upon the number of eligible recipients of programs and services funded under the terms of the financial transfer agreement.

The Financial Transfer Agreement

229. In negotiating financial transfer agreements, the Parties shall take into account the following:

(a) one time implementation costs, in the first financial transfer agreement;

(b) costs to operate Westbank First Nation government;

(c) the desirability of reasonably stable, predictable and flexible funding arrangements;

(d) levels of support provided by governments to Westbank First Nation;

(e) the jurisdictions of, and authorities, obligations, programs and services assumed, or to be assumed, by Westbank First Nation during the duration of the particular funding agreement;

(f) Westbank First Nation's own source revenue capacity;

(g) the efficiency and cost-effectiveness of the proposed arrangements, including issues related to the size, location and accessibility of Westbank First Nation; and

(h) levels of support provided to other First Nations by government.

230. The exercise of Westbank First Nation's legislative authority pursuant to this Agreement shall not create or imply any funding or financial obligation for Canada.

231. The financial transfer agreements entered into pursuant to this Agreement may consolidate federal program funding for Westbank First Nation.

232. For greater certainty, funding provided in a financial transfer agreement entered into pursuant to this Agreement is money given to Westbank First Nation pursuant to an agreement between Westbank First Nation and Canada.

233. Any financial transfer agreements entered into pursuant to this Agreement shall be subject to the terms and conditions negotiated between Canada and Westbank First Nation.

Westbank First Nation Cost-Sharing of Self-Government

234. (a) In negotiating the initial financial transfer agreement, Westbank First Nation's own source revenue capacity shall not be considered.

(b) In negotiating subsequent financial transfer agreements, and not more than seven years after the Effective Date, the consideration of Westbank First Nation's own source revenue capacity shall be taken into account in a manner that does not create disincentives for Westbank First Nation to raise revenues and it may be phased in on an incremental and staged basis over an agreed upon period of time.

235. Unless specific sources of own source revenue capacity are determined by the Parties to be exempt from calculation, all sources of Westbank First Nation government revenue shall be included in the calculation of Westbank First Nation own source revenue capacity.

236. For greater certainty, Westbank First Nation's own source revenue capacity refers solely to the revenue capacity of Westbank First Nation government.

237. When taking into account Westbank First Nation's own source revenue capacity in the negotiation of the second and subsequent financial transfer agreements, the Parties will give due regard to Westbank First Nation's contribution to the cost of Westbank First Nation government.

238. (a) Westbank First Nation's own source revenue capacity shall be taken into account in the determination of funding set out in the financial transfer agreement for programs and services which Westbank First Nation provides pursuant to jurisdictions set out in the Agreement.

(b) Programs and services which Westbank First Nation delivers on behalf of Canada, in areas where Westbank First Nation has no jurisdiction in this Agreement, shall be delivered in accordance with the terms and conditions of the agreements negotiated for the delivery of those programs and services.

239. During the term of the first financial transfer agreement, the Parties shall determine and mutually agree upon a system of data collection and information exchange for the measurement of own source revenue capacity.

240. Any own source revenue agreement reached between Canada and Westbank First Nation shall be negotiated without prejudice to any future financing arrangements that may arise out of treaty negotiations in the province or flow from a potential treaty.

Provisions Respecting Financial Transfer Agreements

241. Financial transfer agreements shall be in the form of a contract which shall be attached to, but not form part of, this Agreement, and shall be subject to the appropriation of funds by the Parliament of Canada.

242. The initial and subsequent financial transfer agreements may reflect a progressive implementation of Westbank First Nation jurisdiction set out in this Agreement.

243. Financial transfer agreements shall set out the manner in which funding levels may be adjusted during the period of the financial transfer agreement.

244. The financial transfer agreements shall include provisions which enable federal Ministers to fulfill accountability requirements to the Parliament of Canada with respect to federal transfers under the financial transfer agreements.

Review and Renewal of Financial Transfer Agreements

245. Every five years, or at such other period as the Parties may agree, the Parties shall negotiate a renewal of the financial transfer agreements by which funding may be provided to Westbank First Nation.

246. Such negotiations may begin at any time prior to the end of the fourth fiscal year of the then current financial transfer agreement, but in any event shall begin no later than April 1st of the final fiscal year covered by the financial transfer agreement.

247. In the event that a renewal of the financial transfer agreement is not executed by the day of the expiry of the period covered by the financial transfer agreement which is being renewed, Canada shall provide to Westbank First Nation a financial transfer in the amount and subject to the terms and conditions set out in the financial transfer agreement then in existence, thereby extending the funding period under the financial transfer agreement for not more than one additional year.

248. The renewed agreement shall come into force on the first day after the expiration of the previous financial transfer agreement and shall expire on March 31st five years later or such other date as the Parties may agree.

249. Despite sections 245 to 248, and by mutual consent, Canada and Westbank First Nation may enter into new financial agreements based on new mechanisms that may be developed and which shall consider the elements set out in section 229.

PART XXVI

PRINCIPLES OF IMPLEMENTATION

Implementation Plan

250. Prior to ratification of this Agreement, the Parties shall prepare an implementation plan.

251. The implementation plan shall take effect on the Effective Date of the Agreement and have a term of 10 years, or such other term as the Parties may agree.

252. The implementation plan shall:

(a) include a description of the implementation activities arising from the obligations set out in this Agreement, the activities anticipated to fulfill those obligations, and the responsible Parties and the anticipated time lines for completion;

(b) include a communications strategy in respect of the implementation and content of the Agreement;

(c) specify how the implementation plan will be amended, renewed or extended; and

(d) include any other matters agreed to by the Parties.

253. The implementation plan shall not create any legal obligations and, for greater certainty, shall not form a contract between Canada and Westbank First Nation.

254. The implementation plan shall be appended to, but shall not be part of, this Agreement. For greater certainty, the implementation plan shall not be used to interpret the Agreement.

Intergovernmental Implementation Committee

255. On the Effective Date, or as soon as practicable thereafter, the Parties agree to establish an intergovernmental implementation committee to provide a forum for the Parties to discuss the implementation of the Agreement. The intergovernmental implementation committee shall be for the same term as the implementation plan.

256. The intergovernmental implementation committee shall consist of one individual designated by Canada and one individual designated by Westbank First Nation.

257. The intergovernmental implementation committee shall have the following duties and responsibilities:

(a) oversee and provide direction on implementation of the Agreement and the implementation plan;

(b) monitor implementation of the Agreement and the implementation plan;

(c) provide an initial forum to resolve disputes related to implementation of the Agreement without in any way limiting access to the dispute resolution processes set out in Part XXX;

(d) conduct periodic reviews and make recommendations to the Parties on the renewal of the implementation plan beyond the initial period;

(e) provide an annual report on implementation of the Agreement to the Parties; and

(f) establish its own internal procedures.

PART XXVII

TAXATION TREATMENT

Tax Treatment of Government and Government Subsidiaries

258. (a) For the purposes of paragraph 149(1)(c) of the *Income Tax Act*, Westbank First Nation is deemed to be a public body performing a function of government in Canada.

(b) For the purposes of paragraphs 149(1)(d) to 149(1)(d.6) and subsections 149(1.1) to 149(1.3) of the *Income Tax Act*, Westbank First Nation is deemed to be a municipality in Canada.

Tax Treatment of Gifts to Westbank First Nation

259. (a) A person who makes a gift to Westbank First Nation has the same tax treatment in respect of the gift as the person would have if the gift had been made to a charity registered under the *Income Tax Act*.

(b) For greater certainty, subsection 259(a) does not require Westbank First Nation to comply with the requirements of the *Income Tax Act* relating to charities registered under that *Act*.

PART XXVIII

TAX AGREEMENTS

260. From time to time, Canada and Westbank First Nation may negotiate and attempt to reach agreements on:

(a) the extent, if any, that Westbank First Nation shall exercise direct taxation over persons on Westbank Lands;

(b) the manner in which Westbank First Nation's taxation shall be coordinated with existing federal taxation systems; and

(c) other such matters as may be agreed upon by Canada and Westbank First Nation relating to taxation matters.

PART XXIX

TRANSFER OF CAPITAL AND REVENUE MONEYS

261. All moneys held by Canada pursuant to the *Indian Act* for the use and benefit of Westbank First Nation, being commonly referred to as capital and revenue moneys of the Band, shall be transferred by Canada to the Council following the ratification of this Agreement.

262. Upon transfer of the moneys referred to in section 261, Canada shall no longer thereafter be responsible for the collection of moneys payable:

(a) to or for the benefit of Westbank First Nation; or

(b) except as provided in section 263, to or for the benefit of a Member.

263. Until Westbank First Nation exercises the jurisdiction for estates referred to in Part VIII, Canada shall collect any moneys payable to or for the benefit of deceased Members, Mentally Incompetent Members and infant Members.

264. For greater certainty, Canada shall not be liable for any errors or omissions in the administration of all moneys held by Westbank First Nation for the use and benefit of Westbank First Nation that occur subsequent to the transfer of capital and revenue moneys of the Band from Canada to the Council.

265. Canada shall be liable for any errors or omissions of Canada that occurred while the capital and revenue moneys were under Canada's administration.

266. Upon the transfer of moneys in accordance with section 261, Canada shall provide to Westbank First Nation a history report which details all receipts and expenditures from both the capital and revenue accounts of the Band for the ten year period prior to the date of transfer.

PART XXX

DISPUTE RESOLUTION

267. In the event of a dispute between the Parties arising out of or relating to this Agreement, the Parties agree to meet, negotiate in good faith and attempt to resolve the dispute amicably without litigation. The Parties agree to use the procedure set out in this Part.

268. (a) If a dispute arises under this Agreement which cannot be resolved by the persons directly involved within 30 days, either Party may invoke this dispute resolution procedure by giving written notice to the other designating a senior official with appropriate authority to be its representative in negotiations relating to the dispute.

(b) Upon receipt of the notice referred to in subsection 268(a), the other Party shall, within five business days, designate a senior official with similar authority to be its representative.

(c) Within 10 business days of the designation of both officials, the designated officials shall enter into direct, good faith negotiations concerning the dispute.

(d) If within 30 business days after the first meeting between the senior officials, the Parties have failed to resolve the dispute or agreed to extend the time for senior officials to resolve the dispute, then the Parties agree to use a mediator, in accordance with this Part, to assist in resolving the dispute.

269. Where a mediator is required to assist in resolving the dispute, the following rules shall apply:

(a) the Parties shall jointly select a mediator. If the Parties are unable to agree upon the choice of a mediator, then a mediator shall be chosen, upon application by the Parties, by the British Columbia Arbitration and Mediation Institute;

(b) the Parties agree to participate in good faith in the mediation process and to meet with the mediator as soon as possible; and

(c) each Party shall bear its own costs of the mediation.

270. If the Parties are unable to resolve the dispute within 60 business days of the first meeting with the mediator, or within such time as the Parties may agree in writing, the Parties may agree to submit the dispute to arbitration, pursuant to this Agreement.

271. Where the Parties agree to submit the dispute to arbitration, the following rules shall apply:

(a) the dispute shall be resolved by a single arbitrator if the Parties agree on one and, otherwise, by three arbitrators, one to be appointed by each Party and a third to be chosen by the first two named;

(b) the Parties may agree on the procedure to be followed in the arbitration. If they cannot agree on this procedure within 15 business days of the appointment of an arbitrator or arbitrators, the procedure shall be determined by the arbitrator or arbitrators;

(c) the arbitrator or arbitrators shall issue a written decision within 30 business days of the completion of the arbitration hearing and shall provide copies of the written decision to each Party; and

(d) unless otherwise agreed or otherwise ordered by the arbitration decision, the costs of the arbitration shall be shared equally by the Parties.

272. (a) The Parties agree that neither shall commence litigation until completion of the mediation process. In the event that the Parties have agreed to arbitration, neither Party may commence litigation until receipt of the arbitration decision.

(b) Where litigation is to be commenced by a Party, it may only be done upon 20 business days written notice to the other Party.

PART XXXI

INDIAN ACT PROVISIONS

Health

273. Paragraph 81(1)(a) of the *Indian Act* shall continue to apply.

Fisheries

274. Paragraph 81(1)(o) of the *Indian Act* R.S.C. 1985 in relation to fish shall continue to apply.

Westbank First Nation Property Taxation

275. (a) Paragraphs 83(1)(a), (e), (e.1), (f), (g) and subsections 83(3), (4), (5), (6) of the *Indian Act,* shall continue to apply.

(b) For greater certainty, the Westbank First Nation by-laws in relation to property taxation, enacted pursuant to section 83 of the *Indian Act* which are in force at the time of ratification of this Agreement, shall continue in force in accordance with the provisions of the *Indian Act*.

(c) For greater certainty, interests in Westbank Lands are interests in lands as referred to in paragraph 83(1)(a) of the *Indian Act*.

General *Indian Act* Provisions

276. In addition to other provisions of this Agreement with respect to the application of the *Indian Act*, the following provisions of the *Indian Act* shall continue to apply:

(a) definition of "band", for the purpose of application to other sections of the *Indian Act* shall continue to apply;

(b) definition of "reserve", as set out in paragraph (a) only of the definition for "reserve";

(c) section 3, sections 5 to 7 and the definition of "Indian" and "Indian Register";

(d) section 29;

(e) section 70, paragraphs 73(1)(f), (g) and (h), subsections 73(2) and 73(3);

(f) sections 86 and 87 and subsection 90(1); and

(g) sections 101 to 108.

277. Unless otherwise provided by this Agreement or Westbank Law, section 89 of the *Indian Act* shall continue to apply.

278. For those provisions of the *Indian Act* which continue to apply in accordance with this Agreement, section 88 of the *Indian Act* shall also continue to apply.

279. Where by-law provisions under section 81 of the *Indian Act* continue to apply, paragraphs 81(1)(q) and (r), section 82 and section 86 of the *Indian Act* also continue to apply.

280. Where pursuant to this Agreement the *Indian Act* continues to apply:

(a) reference to "Band" in the *Indian Act* shall mean Westbank First Nation; and

(b) reference to "council of the band" in the *Indian Act* shall mean Council.

PART XXXII

RATIFICATION

281. Initialling of this Agreement by the negotiators for Westbank First Nation and Canada signifies that they shall seek ratification.

282. Ratification of this Agreement by Westbank First Nation requires that at least 50 percent plus one (50% + 1) of all Eligible Voters, as that term is defined in Schedule A to this Agreement, participate in the ratification by casting a vote and that at least fifty percent plus one (50% + 1) of those voting approve the Agreement.

283. Ratification of this Agreement by the Parties in accordance with this Part and Schedule A is a condition precedent to the validity of this Agreement and, unless so ratified, this Agreement has no force or effect.

284. Westbank First Nation shall seek ratification of this Agreement by the process set out in Schedule A.

285. Ratification of this Agreement by Canada requires:

(a) that this Agreement be signed by a Minister of the Crown authorized by the Governor-in-Council; and

(b) the enactment of federal legislation giving effect to this Agreement.

PART XXXIII

GENERAL

Review

286. Unless the Parties otherwise agree, the Parties shall review this Agreement within five years of the ratification by Westbank First Nation to consider the following:

(a) whether this Agreement has been implemented in accordance with the implementation plan;

(b) whether any transfer of programs, responsibilities and resources pursuant to this Agreement has been successfully implemented;

(c) the effectiveness of this Agreement to implement the inherent right of self-government compared to other self-government agreements in British Columbia;

(d) the effectiveness of this Agreement to incorporate implementation of the financial transfer agreements compared to other self-government agreements in British Columbia;

(e) in consultation with the province, progress made in treaty-making and its relationship with this Agreement; and

(f) whether this Agreement should be amended to reflect mutually agreed upon conclusions.

287. The Parties agree to address issues arising out of section 286 with a view to resolution.

Westbank Internal Transfer of Rights and Interests

288. For greater certainty, upon the Effective Date, all the rights, titles, interests, assets, obligations and liabilities of the Band, thereafter known as the Westbank First Nation, shall continue to be vested in Westbank First Nation.

Professions and Trades

289. (a) Subject to sections 175 and 191, federal and provincial laws apply in respect of the accreditation and certification of professions and trades, including education professionals.

(b) In the event of a conflict between federal and provincial laws in relation to accreditation, certification or professional conduct of professions and trades and Westbank Law enacted in accordance with any of the provisions of the Agreement, the federal or provincial law shall prevail to the extent of the conflict.

Reference to Legislation

290. Citation of legislation refers to legislation as amended from time to time:

(a) except where a specific date is indicated; and

(b) for greater certainty, reference to the *Constitution Act, 1982* includes the 1983 amendments and any further amendments.

Canadian Human Rights Act

291. Nothing in this Agreement limits the operation of the *Canadian Human Rights Act* in respect of the Westbank First Nation and Westbank Lands and Members. The interpretation and application of the *Canadian Human Rights Act* in respect of Westbank First Nation and Westbank Lands and Members shall take into account:

(a) the nature and purpose of this Agreement; and

(b) the entitlement of Westbank First Nation to provide programs and services either exclusively or on a preferential basis to Members, where justifiable; and

(c) the entitlement of Westbank First Nation to give preference to its Members in hiring employees and contractors for Westbank First Nation operations, where justifiable.

Freedom of Information and Privacy

292. Canada will present, in the Legislation, amendments to the *Access to Information Act* and the *Privacy Act* to protect from disclosure information provided in confidence by the Westbank First Nation as if it were information provided to Canada by another government in Canada.

293. Canada will present, in the Legislation, amendments to the *Privacy Act* to allow Westbank First Nation access to information necessary for Westbank First Nation to exercise its jurisdictions under this Agreement.

294. The Parties may enter into agreements in respect of any one or more of the collection, protection, retention, use, disclosure and confidentiality of personal, general or other

information.

295. Canada may provide information to Westbank First Nation in confidence if Westbank First Nation has made a law or has entered into an agreement with Canada under which the confidentiality of the information will be protected.

296. Notwithstanding any other provision of this Agreement:

(a) Canada is not required to disclose any information that it is required to withhold under any federal law;

(b) if federal legislation allows the disclosure of certain information only if specified conditions for disclosure are satisfied, Canada is not required to disclose that information unless those conditions are satisfied; and

(c) the Parties are not required to disclose any information that may be withheld under a privilege at law or under sections 37 to 39 of the *Canada Evidence Act*.

Liability

297. (a) Westbank First Nation is not liable in respect of anything done or omitted to be done by Her Majesty in Right of Canada or any person or body authorized by Her Majesty in the exercise of any federal rights, powers or responsibilities arising from applicable federal law which:

(i) are in relation to the same subject matters set out in this Agreement and for which there has been no corresponding exercise of jurisdiction by Westbank First Nation at the time of the act or omission; or

(ii) occurred prior to the Effective Date

(b) Her Majesty in Right of Canada is not liable in respect of anything done or omitted to be done by Westbank First Nation or any person or body authorized by Westbank First Nation:

i) in relation to Westbank Lands that occurred after the Effective Date; or

ii) in the exercise of any rights, powers or responsibilities arising from Westbank Law.

298. The terms of this Agreement do not constitute nor shall they be interpreted as constituting a waiver by Westbank First Nation in regard to any liabilities, acts or omissions of Canada.

Amendment

299. This Agreement may be amended where consent of each Party is obtained. Westbank First Nation's consent to any amendment shall be obtained in accordance with any referendum procedures of the Westbank First Nation and any procedures for ratification referred to in section 284. Canada's consent to any amendment shall be by way of Order-in-Council.

Entire Agreement

300. This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right, or obligation affecting this Agreement.

301. The preamble and schedule to the Agreement form part of the Agreement.

302. The preamble, the several Parts and the schedule of the Agreement shall be read together and interpreted as one agreement.

Interpretation

303. There is no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any particular Party.

304. In this Agreement:

(a) unless it is otherwise clear from the context, the use of the word "including" means "including, but not limited to", and the use of the word "includes" means "includes, but is not limited to";

(b) unless it is otherwise clear from the context, a reference to a "Part", "section", "subsection", "Schedule", or "Appendix" means a Part, section, subsection, schedule, or appendix, respectively, of this Agreement;

(c) headings and subheadings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement; and

(d) unless it is otherwise clear from the context, the use of the singular includes the plural and the use of the plural includes the singular.

Notice

305. In sections 306 to 311 "communication" includes a notice, document, request, approval, authorization or consent.

306. Unless otherwise set out in this Agreement, a communication between the Parties under this Agreement must be:

(a) delivered personally or by courier;

(b) transmitted by fax; or

(c) mailed by prepaid registered post in Canada.

307. A communication shall be considered to have been given, made or delivered, and received:

(a) if delivered personally or by a courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;

(b) if transmitted by fax and the sender receives confirmation of the transmission, at the start of business on the business day following the day on which it was transmitted; or

(c) if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.

308. The Parties may agree to give, make or deliver a communication by means other than those provided in section 306.

309. The Parties will provide to each other addresses for delivery of communications under this Agreement and, subject to section 311, will deliver a communication to the address provided by each other Party.

310. A Party may change its address or fax number by giving notice of the change to the other Party.

311. If no other address for delivery of a particular communication has been provided by a Party, a communication will be delivered, mailed to the address or transmitted to the fax number of the intended recipient as set out below:

For: **Canada**
Attention: Minister of Indian Affairs and Northern Development
10 Wellington Street
Gatineau, Quebec
K1A 0H4
Fax Number: (819)953-4941

For: **Westbank First Nation**
Attention: Chief and Council
301-515 Highway 97 South
Kelowna, British Columbia
V1Z 3J2
Fax Number: (250)769-4377

Signed in Westbank, British Columbia this 3rd Day of October, 2003.

Chief Robert Louie

Witness

Councillor Clarence Clough

Witness

Councillor Michael Werstuik

Witness

Councillor Rafael DeGuevara

Witness

Councillor Larry Derrickson

Witness

The Honourable Robert D. Nault
Minister of Indian Affairs
and Northern Development

The Honourable Senator
D. Ross Fitzpatrick
Senator for the Okanagan-
Similkameen, British Columbia

SCHEDULE A

RATIFICATION OF THE WESTBANK FIRST NATION SELF-GOVERNMENT AGREEMENT

1.0 Definitions

1.1 In this schedule the following definitions will apply in addition to the definitions for the Agreement:

"Band Member" means a person whose name appears on the Band Membership List or who is entitled to have his or her name appear on the Band Membership List;

"Band Membership List" means the band membership list for Westbank First Nation as maintained by Canada;

"Eligible Voter" means a person whose name appears on the Official Voters List of the Westbank First Nation;

"Official Voters List" means the official voters list prepared by the Ratification Committee pursuant to section 4.0;

"Ratification Committee" means the Ratification Committee established pursuant to section 3.0;

"Ratification Vote" means a referendum by Eligible Voters to formally approve or disapprove the Agreement;

2.0 General

2.1 Ratification of the Agreement by Westbank First Nation in accordance with this Schedule shall be considered ratification by all persons eligible to be Band Members of Westbank First Nation.

2.2 The Agreement shall be ratified by Westbank First Nation before being considered for ratification by Canada.

2.3 Where there is a reference in this Schedule to a period of time after or before a specified day the period does not include the specified day.

2.4 Canada shall pay the approved costs of the Westbank First Nation ratification process.

2.5 After ratification of the Agreement by Westbank First Nation but prior to submission of this Agreement for ratification by Canada, the negotiator, on behalf of Canada, and the Council, on behalf of Westbank First Nation, may agree to minor amendments to the specific provisions of this Agreement.

3.0 Ratification Committee

3.1 A Ratification Committee shall be established with responsibility to prepare the Official Voters List and to conduct the Ratification Vote in accordance with the provisions of this Schedule.

3.2 The Ratification Committee shall consist of one representative of Westbank First Nation as designated by Council, one representative of Canada as designated by the Minister of Indian Affairs and Northern Development and a third person designated jointly by Council and the Minister of Indian Affairs and Northern Development.

3.3 Following discussions with Westbank First Nation, the Ratification Committee shall prepare a budget for the Westbank First Nation ratification process subject to review and approval by Canada.

3.4 One of the designated representatives of the Ratification Committee shall explain the mode of voting to an Eligible Voter when requested to do so by the Eligible Voter.

3.5 In instances where an Eligible Voter requests assistance because he or she is unable to responsibly fill out the ballot, one of the designated representatives of the Ratification Committee shall assist the Eligible Voter by marking his or her ballot in the manner directed by the Eligible Voter and shall place such ballot in the ballot box.

4.0 Official Voters List

4.1 At least 30 days prior to the first date set for voting, the Ratification Committee shall prepare and post a list which shall be comprised of all persons whose names appear on the Band Membership List, and who will be, as of the last date of the vote, at least 18 years of age.

4.2 The voters list prepared pursuant to this section shall constitute the Official Voters List for purposes of the Ratification Vote.

4.3 The Ratification Committee shall post the Official Voters List in the administration office of Westbank First Nation, the Regional Office of the Department of Indian Affairs and Northern Development and, as determined by the Ratification Committee, in other prominent places.

4.4 Any Band Member may apply to the Ratification Committee within 10 days of the posting of the Official Voters List to have the list revised on the grounds that:

(a) the name of a Band Member has been omitted;

(b) the name of a Band Member is incorrectly set out; or

(c) the name of a person not entitled to vote is included.

4.5 Where the Ratification Committee is satisfied that a revision to the Official Voters List is necessary, the Ratification Committee shall make the revision and the revision shall be final and shall be added to the posted Official Voters List.

4.6 The Ratification Committee will immediately advise the Parties of the name and reason for the Band Member being deleted or not being added to the Official Voter List.

4.7 Only persons who are on the Official Voters List shall be entitled to vote at the Ratification Vote.

5.0 Information Campaign

5.1 The Ratification Committee shall take all reasonable steps necessary to ensure that Eligible Voters have a reasonable opportunity to learn about the ratification process and the substance of the Agreement.

5.2 Only material submitted by the Ratification Committee to, and approved by, the Parties shall be made available or distributed to Eligible Voters by the Ratification Committee pursuant to subsection 5.1. Material submitted by the Ratification Committee to a Party shall be considered approved by that Party unless the Ratification Committee receives written notice otherwise within 15 calendar days of the material being received by that Party.

5.3 The Ratification Committee shall hold at least one information meeting at Westbank First Nation no earlier than 10 days and no later than 21 days after posting the notice of the Ratification Vote. The Ratification Committee may hold further information meetings as, when, and where it may determine.

6.0 Notification of Ratification Vote

6.1 The date or dates for the Ratification Vote shall be set by resolution of Council of Westbank First Nation and they shall advise the Ratification Committee in writing of the date or dates at least 35 days before the first date of the vote.

6.2 The Ratification Committee shall post a notice of the Ratification Vote in the locations where the Official Voters List was posted pursuant to subsection 4.3.

6.3 The notice of the Ratification Vote shall include the following information:

(a) the date(s), time(s) and location(s) of the Ratification Vote;

(b) the date(s), time(s) and location(s) of any advance vote held in accordance with subsection 7.2; and

(c) the proposed wording of the Ratification Vote question.

7.0 Voting Process

7.1 The Ratification Vote shall be held at such locations as the Ratification Committee considers necessary.

7.2 The Ratification Committee may hold an advance vote, which may include a mail-in vote, in a manner it determines, for Eligible Voters who anticipate being unavailable to vote on the date(s) set for the Ratification Vote.

7.3 The Ratification Vote shall be by secret ballot.

7.4 The appearance, format, and contents of the ballot shall be approved by the Parties to this Agreement prior to the posting of the notice of the Ratification Vote.

7.5 The Ratification Committee shall receive and tabulate all ballots.

8.0 Ratification of this Agreement by Westbank First Nation

8.1 Westbank First Nation shall be considered to have ratified this Agreement if at least 50 percent plus one (50% + 1) of all Eligible Voters, as that term is defined in Schedule A to this Agreement, participate in the ratification by casting a vote and that at least fifty percent plus one (50% + 1) of those voting approve the Agreement.

8.2 The Ratification Committee shall, as soon as practical and in any event no later than seven days after the last date of the vote, tabulate the results of the vote showing the total number of ballots:

(a) cast;

(b) approving this Agreement;

(c) not approving this Agreement;

(d) spoiled; and

(e) rejected.

8.3 The Ratification Committee shall thereafter publish the tabulated results in the locations where the Official Voters List was posted pursuant to subsection 4.3 and may publish the tabulated results in such other locations as the Ratification Committee determines.

8.4 The Ratification Committee shall, within fourteen days after publication of the tabulated results pursuant to subsection 8.3, prepare and submit to the Parties a report setting out the tabulated results and the details of the carrying out of its responsibilities in the Westbank First Nation ratification process.

9.0 Ratification by Canada

9.1 After the Agreement has been ratified pursuant to section 8.1, the Agreement shall be presented to Canada for approval by the Governor-in-Council.

9.2 Canada will have ratified the Agreement when federal ratification legislation is in effect.

9.3 The ratification legislation shall be prepared in consultation with Westbank First Nation.

Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada
Canada